

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 96-0663 ST
Sales and Use Tax
For The Tax Period: 1995

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ISSUES

I. **Sales/Use Tax – Public Transportation Exemption:** Replacement Parts/Repair

Authority: IC 6-2.5-2-1, IC 6-2.5-4-1, IC 6-2.5-3-2, 45 IAC 2.2-5-61, Sales Tax Information Bulletin #9

Taxpayer protests the assessment of use tax on purchases made for vehicle repair and replacement parts.

II. **Sales/Use Tax – Public Transportation Exemption:** Repair Shop

Authority: 45 IAC 2.2-5-61

Taxpayer protests the assessment of use tax on items purchased for use in the taxpayer's repair shop.

III. **Sales/Use Tax – Public Transportation Exemption:** Overhead Items

Authority: 45 IAC 2.2-5-61

Taxpayer protests the assessment of use tax on overhead items such as computer equipment, uniforms, and maps.

IV. **Sales/Use Tax – Purchase of Equipment:** Farm Combine and Related Equipment

Authority: 45 IAC 2.2-5-61

Taxpayer protests the assessment of use tax on purchases of a farm combine purchased for another business of taxpayer.

STATEMENT OF FACTS

Taxpayer hauls waste and other disposable materials. In most cases, the taxpayer hauls the waste to designated dumps. When taxpayer hauls sludge created by its customers, the taxpayer picks up sludge from its customers and hauls it to designated agricultural fields. The taxpayer does not purchase the sludge from the customers. Taxpayer is paid to haul and dispose of its customers' waste materials. Taxpayer uses a spreader/applicator that receives sludge from a tanker to spread the sludge onto farmer's fields.

I. Sales/Use Tax – Public Transportation Exemption: Replacement Parts/Repair

DISCUSSION

Pursuant to IC 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana. IC 6-2.5-4-1 provides that a retail transaction involves the transfer of tangible personal property. Pursuant to IC 6-2.5-3-2, "an excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction."

Taxpayer uses trucks and utility vehicles to transport workers who apply the sludge to the field or supervise the operation. The Department assessed use tax on taxpayer's purchase of vehicle repair and replacement parts. Taxpayer protests the tax assessed on its repair and replacement of parts used in these vehicles. Taxpayer argues that these vehicles are necessary to the rendering of public transportation; thus, repairs and replacement parts are not subject to tax. Taxpayer cites 45 IAC 2.2-5-61(d) which lists items that the Department has determined are necessary to the rendering of public transportation. Included in this list are "all replacement parts, repair, parts, and materials consumed by exempt equipment."

The auditor determined that the taxpayer's application of sludge onto fields was a separate business activity and not public transportation. Thus, taxpayer's purchases of replacement parts and vehicle repair on those support vehicles were not necessary to rendering public transportation and not exempt from tax. When taxpayer arrives at the fields upon which the sludge will be spread, public transportation has ended. Taxpayer's subsequent activity of spreading the sludge on farmer's fields is an agricultural service and not public transportation. Pursuant to Sales Tax Information Bulletin #9, purchases of agricultural machinery, tools, and equipment are exempt from sales and use tax if the machinery, tools, and equipment are used in the direct production of agricultural commodities. Thus, the spreader/applicator used by taxpayer is exempt. However, the trucks and utility vehicles are neither used in the direct production of agricultural commodities, nor are they used in public transportation. Thus, repairs and replacement parts to these non-exempt vehicles are subject to use tax.

FINDING

Taxpayer's protest is denied.

II. **Sales/Use Tax – Public Transportation Exemption:** Repair Shop

DISCUSSION

Taxpayer maintains a repair shop on its premises for repairing vehicles used in rendering public transportation. Taxpayer cites 45 IAC 2.2-5-61(d) which lists items that the Department has determined are necessary to the rendering of public transportation. Included in this list are “items used for repairs and maintenance of such vehicles.” To the extent that the repair shop is used to repair vehicles that are used in the rendering of public transportation, the purchases are exempt. Taxpayer did not present any information to show that the repair shop purchases were used solely to repair vehicles that are necessary to rendering public transportation. Repairs made to support vehicles that transport workers are subject to tax.

FINDING

Taxpayer’s protest is denied.

III. **Sales/Use Tax - Public Transportation Exemption:** Overhead Items

DISCUSSION

Taxpayer protests the assessment of use tax on office supplies, a copier, and software. Pursuant to 45 IAC 2.2-5-61, the state gross retail tax shall not apply to the sale and storage or use in this state of tangible personal property which is directly used in the rendering of public transportation of persons or property. In order to qualify for exemption, the tangible personal property must be necessary to the rendering of public transportation.

The list in 45 IAC 2.2-5-61(d), states that “items used for production of financial matters, insurance, schedules, routes, and rates” have been determined to be necessary to the rendering of public transportation. Because taxpayer is not solely engaged in the business of public transportation, it is unclear to what extent this equipment was actually used in public transportation. Taxpayer did not present any information to show that this equipment was used exclusively in providing public transportation. Thus, taxpayer’s purchase of office supplies, a copier and software are subject to tax.

FINDING

Taxpayer’s protest is denied.

IV. **Sales/Use Tax – Purchase of Equipment:** Farm Combine and Related Equipment

DISCUSSION

Taxpayer purchased a farm combine and related farm equipment and a tractor at an auction. The farm combine and related farm equipment were purchased for another business of the taxpayer. Taxpayer contends that this purchase is not subject to use tax because the farm equipment was

not used by taxpayer. Taxpayer did not produce any evidence or documentation to support this assertion. Since the taxpayer did not produce supporting documentation, the Department finds that these purchases are subject to use tax.

FINDING

Taxpayer's protest is denied.